

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs - July 30, 2008

STATE OF TENNESSEE v. WILFRED HYON WARREN

Direct Appeal from the Circuit Court for Blount County
No. C-16214 Michael H. Meares, Judge

No. E2007-02304-CCA-R3-CD - Filed October 31, 2008

A Blount County Circuit Court jury convicted the Defendant-Appellant, Wilfred Hyon Warren (hereinafter "Warren"), of possession of .5 grams or more of cocaine with the intent to sell. He received an eight-year suspended sentence with one hundred days to be served in confinement. On appeal, Warren challenges the sufficiency of the evidence supporting his conviction. Following our review, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

CAMILLE R. McMULLEN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JERRY L. SMITH, J., joined.

Joseph Liddell Kirk and Mack Garner, Knoxville, Tennessee for the appellant, Wilfred Hyon Warren.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Mike Flynn, District Attorney General; Kathy Aslinger, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At trial, Gary Perkins, a deputy with the Blount County Sheriff's Office, testified that on October 30, 2004, at 2:30 in the morning, he observed a car parked in the middle of Singleton Station Road, an area known for high drug activity. Deputy Perkins stopped the car after it made a left turn without using a signal. The driver, later identified as Warren, immediately exited his car and walked toward Deputy Perkins' cruiser. However, Deputy Perkins escorted Warren back to his car so that their actions could be recorded by the video camera installed within Deputy Perkins' cruiser. Deputy Perkins then inquired as to the driver's information: specifically, his identification, name, and date of birth. Warren provided his name, but did not have any other identification. Deputy Perkins checked Warren's driving status and determined it had been revoked for driving under the influence.

Deputy Perkins stated, “[a]fter I talked to [Warren] a few more minutes, [Warren] ends up turning around, putting his back towards me, and taking his hand and tossing an item over the car.” Deputy Perkins actually saw Warren toss the item “over the hood of the car.” However, Warren denied having thrown anything when questioned about it. Although Deputy Perkins did not see the item hit the ground, he “walked around the car in the vicinity right there where the item would have hit on the ground and [] found the bag that was laying there.” The plastic bag contained smaller “baggies” of a substance later confirmed to be cocaine. There was nothing else in the vicinity that was similar to the item Deputy Perkins saw Warren toss. Deputy Perkins took possession of the bag, arrested Warren for driving on a revoked license, and contacted the judicial task force officer. A video of the entire encounter was introduced into evidence and narrated by Deputy Perkins for the jury. Warren’s action of tossing the item over the car was recorded and shown to the jury.

Jacob White, a forensic scientist, analyzed the substance Deputy Perkins recovered and determined the rock-like substance contained cocaine base. He testified that three of the smaller “baggies” submitted contained .8 grams of crack cocaine, and the other small bag contained 2.6 grams of powder cocaine.

Agent Marty Widener, a narcotics investigator with twelve years of experience, testified that the key to determining “whether someone is a user or seller of narcotics, is the packaging of the narcotics.” Generally, people who sell cocaine “bag it up” individually in rocks that weigh between .1 and .2 grams which sell for \$20 to \$40 a piece. Based on his experience, Agent Widener estimated that the total value of the three bags of crack cocaine in the instant case was between \$120 and \$300, and the powder cocaine was valued between \$125 and \$350. He also noted it would be highly unusual for someone to leave this amount of cocaine on the side of the road. Finally, there was no drug paraphernalia found in Warren’s car which, Agent Widener explained would have been consistent with cocaine use.

Warren did not present any evidence at trial.

ANALYSIS

The State, on appeal, is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). When a defendant challenges the sufficiency of the evidence, this Court must consider “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979). Similarly, Rule 13(e) of the Tennessee Rules of Appellate Procedure states, “Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support a finding by the trier of fact of guilt beyond a reasonable doubt.” The requirement that guilt be found beyond reasonable doubt is applicable in a case where there is direct evidence, circumstantial evidence, or a combination of the two. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990) (citing State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977) and Farmer v. State, 343 S.W.2d 895, 897 (Tenn. 1961)). The trier of fact must evaluate the credibility of the witnesses, determine the weight given to witnesses’ testimony, and must reconcile all conflicts in the evidence. State v. Odom, 923 S.W.2d

18, 23 (Tenn. 1996). When reviewing issues regarding the sufficiency of the evidence, this Court shall not “reweigh or reevaluate the evidence.” State v. Philpott, 882 S.W.2d 394, 398 (Tenn. Crim. App. 1994) (citing State v. Cabbage, 571 S.W.2d 832, 836 (Tenn. 1978) (overruled on other grounds)). This Court has often stated that “[a] guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997) (citation omitted). A guilty verdict also “removes the presumption of innocence and replaces it with a presumption of guilt, and the defendant has the burden of illustrating why the evidence is insufficient to support the jury’s verdict.” Id. (citation omitted).

In order to obtain a conviction in this case, the State was required to prove beyond a reasonable doubt that Warren knowingly possessed a controlled substance with the intent to sell or deliver. T. C. A. § 39-17-417(a)(4) (2003). If the amount involved is more than .5 grams of any substance containing cocaine, it is a Class B felony. T.C.A. § 39-17-417(c) (2003).

Warren challenges the sufficiency of the convicting evidence. Specifically, he claims that Deputy Perkins “did not actually see” him possess the drugs. Even if the evidence is sufficient to show Warren possessed the drugs, he further argues there was no evidence to show he intended to sell or deliver them. We disagree.

The evidence in this case is sufficient to establish Warren’s actual possession of the drugs. Actual possession occurs when a person has direct physical control of an object. State v. Edmondson, 231 S.W.3d 925, 928 (Tenn. 2007) (citations omitted). Deputy Perkins saw Warren toss an item over the hood of the car. Deputy Perkins immediately went to the area where the item was thrown and recovered it. Deputy Perkins did not see anything else in the area similar to the item thrown. The item, later confirmed to be cocaine, was observed in Warren’s possession. Deputy Perkins’ testimony was direct proof of Warren’s drug possession. Warren’s claim, in reality, is no more than an attack on Deputy Perkins’ credibility. The trier of fact, not this Court, evaluates the credibility of the witnesses and determines the weight to be given to witnesses’ testimony. Odom, 923 S.W.2d at 23. The jury accredited the testimony of Deputy Perkins which was corroborated by the videotape showing Warren toss the drugs. Accordingly, any rational jury could have found that Warren possessed the drugs that were recovered.

Warren next challenges whether the evidence showed he intended to sell or deliver the drugs. Intent to commit a crime can be inferred from circumstantial evidence. See State v. Joshua J. McKissick, No. M2006-01996-CCA-R3-CD, 2007 WL 2907303, at *4 (Tenn. Crim. App. Oct. 1, 2007), appeal denied (Jan. 28, 2008) (citing Hall v. State, 490 S.W.2d 495, 496 (Tenn. 1973) and State v. Timmy Lee Hill, No. M2005-01126-CCA-R3-CD, 2006 WL 1374668, at *6 (Tenn. Crim. App., Nashville, May 17, 2006)). The trier of fact determines whether the culpable mental state was present by drawing inferences from the circumstances under which a defendant is arrested. Id. There are numerous factual scenarios from which a jury may properly infer that a defendant had the intent to sell or deliver the drugs found in his possession. See State v. Vincent D. Steele, No. M2007-00420-CCA-R3-CD, 2008 WL 366147, at *4 (Tenn. Crim. App. Jan. 11, 2008) (citing State v. Toney L. Conn, No. M2005-02899-CCA-R3-CD, 2006 WL 3498048, at *5 (Tenn. Crim. App.,

Nashville, Nov. 21, 2006) (setting out the factual scenarios surrounding a defendant's possession of cocaine in eight different cases where this Court found the evidence sufficient to prove intent)).

Pursuant to Tennessee Code Annotated Section 39-17-419, the requisite intent to sell can be properly inferred from the circumstances surrounding a defendant's arrest:

It may be inferred from the amount of a controlled substance or substances possessed by an offender, along with other relevant facts surrounding the arrest, that the controlled substance or substances were possessed with the purpose of selling or otherwise dispensing. It may be inferred from circumstances indicating a casual exchange among individuals of a small amount of a controlled substance or substances that the controlled substance or substances so exchanged were possessed not with the purpose of selling or otherwise dispensing in violation of the provisions of § 39-17-417(a). The inferences shall be transmitted to the jury by the trial judge's charge, and the jury will consider the inferences along with the nature of the substance possessed when affixing the penalty.

In this case, Deputy Perkins recovered a plastic bag that held three smaller "baggies" of .8 grams of crack cocaine and a fourth bag of 2.6 grams of powder cocaine. The amount of drugs possessed by Warren, as well as the other relevant facts surrounding the arrest, was sufficient for the jury to infer that Warren possessed the drugs with an intent to sell. T.C.A. § 39-17-419 (2003). The way the drugs were packaged meant they were possessed with the intent to sell, not for personal use. State v. Brown, 915 S.W.2d 3, 8 (Tenn. Crim. App. 1995). It would also be highly unusual for someone to leave that amount of cocaine, valued at \$120 to \$350, on the side of the road. Finally, there was no drug paraphernalia found in Warren's car. "[A] lack of drug paraphernalia, combined with the amount of drugs found in a defendant's possession, may support an inference that the defendant possessed the drugs with the intent to sell or deliver rather than for his own personal use." State v. Charles Henry Jenkins, No. M2004-01931-CCA-R3-CD, 2005 WL 1812827, at *8 (Tenn. Crim. App. Aug. 1, 2005) (citation omitted), perm. to appeal denied (Tenn. Dec. 12, 2005). Warren fails to meet his burden of illustrating why the evidence is insufficient to support the jury's verdict. Accordingly, viewed in the light most favorable to the State, we conclude that the evidence was more than sufficient for a rational trier of fact to find that Warren knowingly possessed .5 grams or more of cocaine with the intent to sell.

CONCLUSION

Following our review, we conclude that the evidence is sufficient to sustain Warren's conviction. Accordingly, we affirm the judgment of the trial court.

CAMILLE R. McMULLEN, JUDGE